

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
8

9 DIMITRITZA H. TOROMANOVA,

10 Plaintiff,

11 v.

12 SUMMIT REAL ESTATE SERVICES,  
13 LLC, et al.,

14 Defendants.  
15

Case No. 2:17-cv-01747-KJD-VCF

**ORDER**

16 Presently before the Court is Defendants' Motion to Dismiss Complaint (#5) and Motion to  
17 Dismiss Amended Complaint (#13), to which all Defendants have joined (#28). Plaintiff filed a  
18 response (#16) to which Defendants replied (#19).

19 **I. Background**

20 On April 4, 2017, Plaintiff filed a lawsuit against Defendants in the District Court for Clark  
21 County, Nevada ("State Court"), Case No. A-17-753456-C ("State Case"). In that State Case,  
22 Plaintiff sought a "Writ of Mandate Without Notice," which the State Court interpreted to be her  
23 complaint. There, Plaintiff alleged a myriad of claims having to do with Defendants' foreclosure on  
24 her real property located at 4174 Jacqueline Way, Las Vegas, Nevada 89115 ("Jacqueline Property").  
25 On July 7, 2017, the State Court granted Defendants' motion to dismiss Plaintiff's complaint,  
26 reasoning that Defendants had standing to foreclose, and that Plaintiff was not entitled to stop the

1 foreclosure as a remedy for an alleged violation of NRS 106.295(1), NRS 106.296, NRS 107.200, or  
2 NRS 107.210.

3 On June 26, 2017, Plaintiff filed the present complaint. While Plaintiff mentions many  
4 different statutes, her specific causes of action are unclear. Additionally, Plaintiff makes allegations  
5 of fraud, negligence, declaratory relief, and injunctive relief, all having to do with the same  
6 foreclosure she believes to be wrongful on her Jacqueline Property. Plaintiff also, for the first time,  
7 mentions her real property located at 10343 Ednor Court, Las Vegas, Nevada 89183 (“Ednor  
8 Property”). She does not state a specific sum of damages or relief that she seeks, but wants to  
9 prevent Defendants from taking any action toward her properties.

## 10 **II. Legal Standard**

11 The Court notes that Plaintiff is *pro se*, meaning that her submissions to the Court are “to be  
12 liberally construed, and . . . however inartfully pleaded, must be held to less stringent standards than  
13 formal pleadings drafted by lawyers.” However, liberal construction of *pro se* pleadings does not  
14 excuse *pro se* litigants from adhering to the rules of procedure. See U.S. v. Merrill, 746 F.2d 458,  
15 465 (9th Cir. 1984). “Pro se litigants must follow the same rules of procedure that govern other  
16 litigants.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). And, “while the complaint must be  
17 liberally construed, a pro se’s party status does not relieve the party of the burden of alleging  
18 sufficient facts on which a recognized legal claim could be based.” Kerr v. Wanderer & Wanderer,  
19 211 F.R.D. 625, 629 (D. Nev. 2002).

### 20 **A. Motion to Dismiss**

21 In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken as  
22 true and construed in a light most favorable to the non-moving party.” Wyler Summit P’ship v.  
23 Turner Broadcasting System, Inc., 135 F.3d 657, 661 (9th Cir. 1988) (citation omitted).  
24 Consequently, there is a strong presumption against dismissing an action for failure to state a claim.  
25 See Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1998) (citation omitted).

1 “To survive a motion to dismiss, a complaint must contain factual matter, accepted as true, to  
2 ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)  
3 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a  
4 motion to dismiss, means that the plaintiff has pleaded facts which allow “the court to draw the  
5 reasonable inference that the defendant is liable for the misconduct alleged.” Id.

6 The Iqbal evaluation illustrates a two-prong analysis. First, the Court identifies the  
7 “allegations in the complaint that are not entitled to the assumption of truth,” that is, those  
8 allegations which are legal conclusions, bare assertions, or merely conclusory. Id. at 1949–51.  
9 Second, the Court considers the factual allegations “to determine if they plausibly suggest an  
10 entitlement to relief.” Id. at 1951. If the allegations state plausible claims for relief, such claims  
11 survive the motion to dismiss. Id. at 1950.

#### 12 B. Claim Preclusion

13 “Claim preclusion prevents the relitigation of claims previously tried and decided.” Littlejohn  
14 v. U.S., 321 F.3d 915, 920–21 (9th Cir. 1984). “[A] federal court must give to a state-court judgment  
15 the same preclusive effect as would be given that judgment under the law of the State in which the  
16 judgment was rendered.” Migra v. Warrant City Sch. Dist. Bd. of Ed., 465 U.S. 75, 84 (1984). Under  
17 Nevada’s claim preclusion rules, “[a] valid and final judgment on a claim precludes a second action  
18 on that claim or any part of it.” Univ. of Nev. v. Tarkanian, 110 Nev. 581, 599 (Nev. 1994). “[C]laim  
19 preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could  
20 have been asserted.” Id. at 600. For claim preclusion to apply, three factors must be present: “(1) the  
21 parties or their privies are the same, (2) the final judgment is valid, and (3) subsequent action is  
22 based on the same claims or any part of them that were or could have been brought in the first case.”  
23 Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054 (Nev. 2008).

24 //

25 //

1 **III. Analysis**

2 **A. Ednor Property**

3 As an initial matter, the Court addresses Plaintiff's claims regarding the Ednor Property. In  
4 the beginning of her first amended complaint, Plaintiff mentions the Ednor Property alongside the  
5 Jacqueline Property, and refers to her "properties" at issue throughout the complaint. However, after  
6 this initial reference, Plaintiff makes no specific mention of the Ednor Property again. She does not  
7 allege specific facts about the Ednor Property, nor state any specific violations or causes of action, or  
8 actions attributable to Defendants and relating to that property. To survive a motion to dismiss,  
9 "factual allegations must be enough to raise a right to relieve above a speculative level," which  
10 Plaintiff has not done. Twombly, 550 U.S. at 550. Plaintiff has not met the required pleading  
11 standards set forth in Federal Rules of Civil Procedure 8(a) and 12(b)(6). As such, all claims in  
12 conjunction with the Ednor Property must be dismissed.

13 **B. Jacqueline Property**

14 All of Plaintiff's claims having to do with the Jacqueline Property are barred by claim  
15 preclusion; all three claim preclusion requirements are met. First, the parties named in this action are  
16 identical to those in the State Case. Second, the State Court's dismissal of Plaintiff's State Case was  
17 a final, valid judgment that made specific findings of fact and conclusions of law, to which this Court  
18 must give preclusive effect. Third, in both the State Case and the present action, all of Plaintiff's  
19 claims stem from the same foreclosure action, and are attempts to prevent that foreclosure. All of  
20 these claims fall within the "grounds of recovery" asserted in the previous suit, or under the umbrella  
21 of grounds of recovery "that could have been asserted." Tarkanian, 110 Nev. at 600.

22 Plaintiff does not put forth any new facts or arguments not already asserted and adjudicated in  
23 the State Case, nor any claims that she could not have asserted alongside her other State Case claims.  
24 Thus, all of Plaintiff's variations of claims, both specifically asserted and those that could have been  
25  
26

1 asserted in her previous State Case, having to do with the Jacqueline Property, must be barred under  
2 the doctrine of claim preclusion and dismissed.

3 **IV. Conclusion**

4 Accordingly, IT IS HEREBY ORDERED Defendants' Motion to Dismiss Complaint (#5) is  
5 **GRANTED;**

6 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss Amended Complaint (#13)  
7 is **GRANTED.**

8 DATED this 23rd day of March, 2018.

9  
10 

11 \_\_\_\_\_  
12 Kent J. Dawson  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26